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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

OUR CHILDREN'S EARTH FOUNDATION, a  
non-profit corporation,

Plaintiff,

v.

ANDREW WHEELER, in his official capacity  
as Administrator of the United States  
Environmental Protection Agency,

Defendant.

Civil Case No. 3:19-cv-7125-WHA

**SECOND STIPULATION TO MODIFY  
CONSENT DECREE DEADLINE AND  
~~PROPOSED~~ ORDER**

1 Pursuant to Civil L.R. 6-1(b), 6-2, 7-12, and paragraph 11 of the Consent Decree (“Consent  
2 Decree”) entered in this case (Dkt. No. 32-1), Plaintiff, Our Children’s Earth Foundation, and  
3 defendants, the United States Environmental Protection Agency *et al.* (“EPA”), (together, “the Parties”) stipulate to further continue the deadline for the appropriate EPA official to sign either: (i) a final rule  
4 containing revisions to National Emissions Standard for Hazardous Air Pollutants (“NESHAP”) Subpart  
5 M under section 112(d)(6) of the Clean Air Act, 42 U.S.C. § 7412(d)(6); or (ii) a final determination  
6 under section 112(d)(6) not to revise NESHAP Subpart M, extending the deadline from June 1, 2023 to  
7 **February 1, 2024.**

8  
9 On October 14, 2020, the Parties filed a motion to approve the Consent Decree to resolve claims  
10 Plaintiff brought against EPA. Dkt. No. 32. The Consent Decree included several deadlines where EPA  
11 (1) agreed to either review or revise New Source Performance Standards (“NSPS”) and NESHAPs  
12 governing a number of sources by dates certain and (2) agreed to sign either final rules or final  
13 determinations not to revise NSPSs and NESHAPs governing a number of sources by dates certain. *See*  
14 Consent Decree ¶¶ 2-8. The Court signed the Consent Decree on October 20, 2020. Dkt. No. 33.

15 Paragraph 11 of the Consent Decree provides that “[t]he deadlines set forth in Paragraphs 2–8  
16 hereof may be modified only by: (a) written stipulation of the Parties with notice to the Court; or (b) the  
17 Court following motion of any party to this Consent Decree, pursuant to the Federal Rules of Civil  
18 Procedure, and upon consideration of any response by the non-moving party.” Consent Decree ¶ 11.

19 Paragraph 8.b of the Consent Decree specifically establishes that “EPA shall sign either: (i) a  
20 final rule containing revisions [to the Dry Cleaning Facilities: National Perchloroethylene Air Emission  
21 Standards NESHAP] Subpart M under section 112(d)(6) of the Act, 42 U.S.C. § 7412(d)(6); or (ii) a  
22 final determination under section 112(d)(6) not to revise NESHAP Subpart M” by no later than  
23 December 1, 2022. Consent Decree ¶ 8.b.

24 Invoking Paragraph 11 of the Consent Decree, on August 18, 2022, the Parties stipulated to  
25 continue the December 1, 2022 deadline to June 1, 2023, which was signed by the Court on August 19,  
26 2022. Dkt. Nos. 41, 42. The Parties now stipulate to further continue the June 1, 2023 deadline to  
27 February 1, 2024.

1 The Parties agree that continuing the current June 1, 2023 deadline to February 1, 2024 for EPA  
 2 to take final action as noted above is fair, reasonable, and in the public's interest. On December 14,  
 3 2022, EPA published a revised risk determination under the Toxic Substances Control Act ("TSCA")  
 4 with respect to Perchloroethylene ("PCE") concluding "that PCE, as a whole chemical substance,  
 5 presents an unreasonable risk of injury to health when evaluated under its conditions of use." 87 Fed.  
 6 Reg. 76481 (Dec. 14, 2022). Because TSCA requires EPA to promulgate a rule "to the extent necessary  
 7 so that [the chemical substance] no longer presents such risk," 15 U.S.C. § 2605(a), EPA is now in the  
 8 process of developing a TSCA regulation with respect to PCE. 87 Fed. Reg. at 76487. EPA anticipates  
 9 publishing its proposed TSCA PCE regulation sometime this spring. *See* OMB, Office of Information  
 10 and Regulatory Affairs, Perchloroethylene; Rulemaking Under Section 6(a) of the Toxic Substances  
 11 Control Act (TSCA), available at  
 12 <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2070-AK84> (last accessed  
 13 March 28, 2023). Because the forthcoming TSCA rule regulating PCE will likely impact how EPA will  
 14 address a NESHAP amendment for PCE with respect to dry cleaning facilities, the Parties agree that  
 15 EPA will need more time to consider what final action it will take and agree that an extension of the  
 16 deadline to February 1, 2024 is reasonable.

17 The Parties have only sought one other modification with respect to deadlines set forth in the  
 18 Consent Decree and EPA has met every other Consent Decree deadline thus far. *See* Consent Decree ¶¶  
 19 2.a, 3.a, 4.a, 4.b, 5.a, 6.a, 6.b, 7.a, 7.b, 8.a.

20 THEREFORE, the Parties stipulate to and request that the Court enter an order continuing the  
 21 existing deadline of June 1, 2023 for the appropriate EPA official to sign "either: (i) a final rule  
 22 containing revisions to [to the Dry Cleaning Facilities: National Perchloroethylene Air Emission  
 23 Standards NESHAP] Subpart M under section 112(d)(6) of the Act, 42 U.S.C. § 7412(d)(6); or (ii) a  
 24 final determination under section 112(d)(6) not to revise NESHAP Subpart M" to **February 1, 2024**.

25 Respectfully submitted,

26 For Plaintiff:

27 /s/ Stuart Wilcox

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Dated: April 3, 2023


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/s/ Hubert T. Lee  
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Dated: April 3, 2023

PURSUANT TO STIPULATION, IT IS SO ORDERED this 8th day of May, 2023

  
Hon. William Alsup  
United States District Judge